

Contract No. 07PB-«#####»

STANDSTILL PAYMENT AGREEMENT

by and between

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

acting by and through the

BONNEVILLE POWER ADMINISTRATION

and

«FULL NAME OF CUSTOMER»

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This STANDSTILL PAYMENT AGREEMENT (“Agreement”) is executed by and between «FULL NAME OF CUSTOMER» (“«Customer Name»”) a [utility] organized under the laws of the State of _____, and the UNITED STATES OF AMERICA, DEPARTMENT OF ENERGY, acting by and through the BONNEVILLE POWER ADMINISTRATION (“BPA”). «Customer Name» and BPA are sometimes referred to herein individually as “Party” and together as “the Parties.”

RECITALS

WHEREAS, Section 5(c) the Northwest Power Act establishes the right of Pacific Northwest electric utilities to participate in the Residential Exchange Program that provides wholesale power cost benefits for residential and small farm consumers; and

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WHEREAS, BPA and the Investor Owned Utilities entered into Settlement Agreements relating to the determination of the Residential Exchange Program benefits for a period commencing October 1, 2001; and

WHEREAS, recently the United States Court of Appeals for the Ninth Circuit has issued a number of opinions, including *Portland General Electric, et al. v. Bonneville Power Administration*, *Golden Northwest Aluminum, Inc. v. Bonneville Power Administration* (“May Opinions”), *Public Utility Dist. No. 1 of Snohomish County Wash. v. Bonneville Power Administration*, and *Public Util. Dist. No. 1 of Grays Harbor v. Bonneville Power Administration* (collectively “Opinions”); and

WHEREAS, as a consequence of BPA’s uncertainty regarding its authority to continue payments under the Settlement Agreements after the May Opinions, BPA temporarily suspended payments to the Investor Owned Utilities under such agreements effective May 21, 2007; and

WHEREAS, BPA continues to collect the cost of the Settlement Agreements in the rates charged to «Customer Name»; and

WHEREAS, it is reasonable to assume that some portion of the cost of the Settlement Agreements currently being collected by BPA will be credited to BPA’s preference customers through the BPA rate process; and

WHEREAS, «Customer Name», wishes to receive a partial credit now for such costs on an interim basis subject to true-up at a later date; and

WHEREAS, the regional discussions presently occurring regarding the remand to BPA of issues relating to the Settlement Agreements and the Residential Exchange Program raised by the Opinions would be severely hampered if individual customers commenced litigation concerning the Opinions which in turn would jeopardize the ability to complete the Regional Dialogue process on the current schedule; and

WHEREAS, as provided in this Agreement, the Parties have reserved all, and do not waive any, statutory, contractual or other rights, obligations or claims regarding the appropriate level of payments under the Residential Exchange Program, including without limitation, the costs to be recovered through BPA’s rates since October 1, 2001.

NOW, THEREFORE, in consideration of the promises and the respective representations hereinafter contained, the Parties hereby promise and agree as follows:

1. TERM

This Agreement shall become effective on the date of execution by the Parties (“Effective Date”) and shall continue through the end of the Term. All obligations hereunder shall be preserved until satisfied.

2. DEFINITIONS

As used herein, the following terms shall have the following meanings:

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- (a) “Benefit Period” means the period beginning on October 1, 2001 and ending on September 30, 2008.
- (b) “BPA True-up Payment Amount” means the amount, if any, by which the Standstill Payment made to «Customer Name» is less than the «Customer Name» Amount.
- (c) “«Customer Name» True-up Payment Amount” means the amount, if any, by which the «Customer Name» Amount is less than the Standstill Payment made to «Customer Name».
- (d) “«Customer Name» Amount” means the amount determined by multiplying the Definitive Payment Amount by the «Customer Name»’s percentage of such amount. The «Customer Name» percentage shall be determined by the BPA Administrator in the Definitive Payment ROD. BPA’s initial proposal in the WP-07 supplemental rate proceeding for determining such percentage shall conform to the methodology described in Exhibit B of this Agreement.
[Non-Slice Version]

“«Customer Name» Amount” means the amount determined by multiplying the «Customer Name»’s Slice and non-Slice portions of the Definitive Payment Amount by the respective «Customer Name»’s percentages of such Slice and non-Slice amounts and summing these amounts. The «Customer Name» percentages shall be determined by the BPA Administrator in the Definitive Payment ROD. BPA’s initial proposal in the WP-07 supplemental rate proceeding for determining such percentages shall conform to the methodology described in Exhibit B of this Agreement. *[Slice Version]*
- (e) “Definitive Payment Amount” means the resulting difference, if any, between the Settlement Costs and the Residential Exchange Program Costs, all as determined by the BPA Administrator in the Definitive Payment ROD.
- (f) “Effective Date” has the meaning specified in Section 1 of this Agreement.
- (g) “Expiration of Stay Date” means the day on which BPA issues the Definitive Payment ROD.
- (h) “Definitive Payment ROD” means a final record of decision in which the BPA Administrator makes, in addition to any other final decisions, a final determination on the Definitive Payment Amount.
- (i) “Fiscal Years 2007-08” means the period beginning on October 1, 2006 and ending on September 30, 2008.
- (j) “Interest Accrual Date” has the meaning specified in section 9 of this Agreement.

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- (k) “Investor Owned Utilities” means Avista Corporation, Idaho Power Company, NorthWestern Corp., PacifiCorp, Portland General Electric Company, and Puget Sound Energy, Inc., or their respective successor entities.
- (l) “Standstill Payment” means the payment specified in Exhibit A.
- (m) “May Opinions” has the meaning specified in the recitals.
- (n) “Opinions” has the meaning specified in the recitals.
- (o) “Northwest Power Act” means the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501.
- (p) “Residential Exchange Interim Relief Agreement(s)” means the agreement(s) of that title executed by BPA and some or all of the Investor Owned Utilities.
- (q) “Residential Exchange Program” means the purchase and sale obligations established under Section 5(c) of the Northwest Power Act.
- (r) “Residential Exchange Program Costs” means the costs of the Residential Exchange Program that should have been included in rates for Fiscal Years 2007-08 as determined by the BPA Administrator in the Definitive Payment ROD.
- (s) “Settlement Agreements” means those agreement(s) executed between BPA and the Investor Owned Utilities that settled the Parties’ rights and obligations under the Residential Exchange Program for the Benefit Period, which may include any amendments, revisions, novations, or replacements thereto.
- (t) “Settlement Costs” means the costs associated with the Settlement Agreements, which may include costs arising from any amendments, revisions, novations, or replacement to such agreements, included in rates for Fiscal Years 2007-08 as determined by the BPA Administrator in the Definitive Payment ROD.
- (u) “Term” means the period from and including the Effective Date and continuing until all true-up payments have been made pursuant to Section 9.
- (v) “True-up Effective Date” has the meaning specified in Section 8 of this Agreement.
- (w) “True-up Payment Event” has the meaning specified in Section 8 of this Agreement.

3. EXHIBITS

Exhibits A and B are attached hereto and made a part of this Agreement.

4. BPA DUTIES AND RESPONSIBILITIES

In consideration for the duties and responsibilities of «Customer Name» as set out in Section 5, BPA shall make the Standstill Payment as specified in Exhibit A to «Customer Name». The amount of the Standstill Payment shall be as specified in Exhibit A. Payment shall be by electronic funds transfer pursuant to instructions provided to BPA by «Customer Name». Payment shall be made as soon as practicable after execution of this Agreement.

5. «CUSTOMER NAME»'S DUTIES AND RESPONSIBILITIES

(a) Stay of Litigation Activities

In consideration for the Standstill Payment, and subject to Section 7 of this Agreement, «Customer Name» agrees to abstain until the Expiration of Stay Date from filing any claim, petition or other legal action in any court or administrative body (other than BPA's administrative proceedings) that:

- (1) Challenges BPA's decision to enter into this Agreement or any other Standstill Payment Agreement(s) executed by BPA and any other preference customer;
- (2) Challenges BPA's decision to enter into the Residential Exchange Interim Relief Agreement(s) executed by BPA and any Investor-Owned Utility;
- (3) Requests refunds, rebates, or any other form of prospective or retroactive rate relief based on or related to the appropriate level of payments under the Residential Exchange Program paid or to be paid to the Investor Owned Utilities, the payments made under the Settlement Agreements, and the calculation or implementation of the Residential Exchange Program, including without limitation the costs of the Settlement Agreements and the Residential Exchange Program included in the BPA rates for all or part of the Benefit Period; or
- (4) Challenges BPA's decision to convene a Northwest Power Act section 7(i) rate proceeding to address the issues raised in the Opinions.

(b) Nothing in this Agreement shall prohibit «Customer Name» from seeking relief under its power sales or transmission agreements with BPA for any other matters unrelated to the matters described in Section 5(a) above.

6. REPRESENTATIONS AND ACKNOWLEDGEMENTS REGARDING STANDSTILL PAYMENT

Each Party hereby represents, acknowledges and agrees that: (a) the Standstill Payment is an interim measure designed to provide financial relief to «Customer Name» pending the outcome of the BPA rate process addressing the Opinions; (b) the Standstill Payment is not intended to be, nor shall it be interpreted to be, a final and definitive payment or settlement of amounts, if any, that are finally determined due and payable to «Customer Name»; and (c) the Standstill Payment made

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pursuant to this Agreement shall be subject to the reconciliation and true-up process described in Section 9 below.

For purposes of the CY 2008 Annual True-Up Adjustment for Actual Costs pursuant to section 4(b)(6)(C)(i) of the Block/Slice Agreement, Contract No. _____, the sum of the Standstill Payment and BPA True-Up Payment Amount under this Agreement will be reflected as an Individual Charge pursuant to section 4(b)(6)(C)(i) of the Block/Slice Power Sales Agreement, and the «Customer Name» True-Up Payment Amount under this Agreement will be reflected as an Individual Credit pursuant to section 4(b)(6)(C)(i) of the Block/Slice Power Sales Agreement. *[Slice Customers Only]*

This Section 6 shall survive the termination or expiration of this Agreement and shall survive even if any other provision(s) of this Agreement is held to be not consistent with law, or void or otherwise unenforceable.

7. NO WAIVER OF RIGHTS

Notwithstanding anything in this Agreement to the contrary, it is hereby agreed that neither Party has waived or is waiving, either by virtue of entering into this Agreement, by making or accepting payments under this Agreement, or otherwise, any arguments or claims it has made or may make, or any rights or obligations it has or may have, regarding the appropriate level Residential Exchange Program payments to the Investor Owned Utilities, the payments made under the Settlement Agreements, or the calculation or implementation of the Residential Exchange Program, including without limitation the costs of the Settlement Agreements and the Residential Exchange Program included in the BPA rates for any period of time whether within or outside of the Benefit Period, and each Party hereby expressly reserves all such arguments, claims and rights. This Section 7 shall survive the termination or the expiration of this Agreement and shall survive even if any other provision(s) of this Agreement is held to be not consistent with law, or void or otherwise unenforceable.

8. TRUE-UP PAYMENT EVENTS

The occurrence of one or more of the events identified below (“True-up Payment Event”) shall result in the true-up of the Standstill Payment pursuant to Section 9 of this Agreement.

- (a) A court of competent jurisdiction issues an order or opinion holding that the Settlement Agreements are consistent with law and BPA resumes payments due under the Settlement Agreements; or
- (b) BPA issues the Definitive Payment ROD.

BPA shall provide written notice to «Customer Name» of such True-up Payment Event and shall specify in such notice the effective date of the True-up Payment Event (“True-up Effective Date”); *provided, however*, that such specified date shall not be a date earlier than three days after receipt by the other Party of such written notice. This Section 8 shall survive the termination or expiration of this Agreement

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and shall survive even if any other provision(s) of this Agreement is held to be not consistent with law, or void or otherwise unenforceable.

9. TRUE-UP CALCULATION AND PAYMENT

Except as provided in Section 11, the Parties hereby agree that on the True-up Effective Date the Standstill Payment paid hereunder shall be subject to reconciliation and true-up in accordance with this Section 9.

(a) Calculation and Commencement of True-up Payment

BPA shall calculate the difference, if any, between the Standstill Payment made to «Customer Name» and the «Customer Name» Amount. If there is any difference between the «Customer Name» Amount and the Standstill Payment amount, then the following provisions shall apply:

- (1) If there is a BPA True-up Payment Amount, then BPA shall pay «Customer Name» such amount. BPA may make such payment to «Customer Name» in a lump sum (without interest) or in equal monthly amounts (including interest) for a period of seven (7) months, as determined by BPA. In either case the payment will appear as a credit to the customer's monthly power bill as promptly as practicable after the issuance of the Definitive Payment ROD. If BPA chooses a lump sum payment and if the credit is larger than the «Customer Name» payment obligation for the month the credit is to be made, then the difference shall be applied to «Customer Name»'s subsequent monthly power bill(s).
- (2) If there is a «Customer Name» True-up Payment Amount, then «Customer Name» shall pay BPA such amount. «Customer Name» may make such payment to BPA in a lump sum (without interest) or pay such amount through a charge that BPA establishes that is applicable only to customers that have signed Standstill Agreements, as determined by «Customer Name». Such charge shall be determined pursuant to the applicable provision(s) of BPA's General Rate Schedule Provisions ("GRSPs") as published in the WP-07 supplemental rate proceeding and shall be applicable for at least a period of seven (7) months. The charge included in such GRSPs will include interest as calculated in Section 9(a)(3). If «Customer Name» elects to make a lump sum payment, such payment must be made to BPA no later than thirty (30) days after the date of issuance of the Definitive Payment ROD.
- (3) The interest on the BPA True-up Payment shall be simple interest computed on the declining balance from the later of October 1, 2008 or the True-up Effective Date ("Interest Accrual Date") until paid. The interest rate applied to such outstanding balances shall equal the one (1) year annual rate of interest posted under the title "Daily Treasury Yield Curve Rates" as published on the U.S. Treasury Department's website at 3:30pm Eastern Standard Time on the Interest Accrual Date. The interest rate is available at the following website:

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www.treasury.gov/offices/domestic-finance/debt-management/interest-rate/yield.shtml.

- (b) In addition to using the true-up provision described in Section 9(a) above, the Parties further agree and acknowledge that if a Court of competent jurisdiction remands, vacates or otherwise reverses BPA's decision to enter into this Agreement, or BPA's determination of the Definitive Payment Amount or the «Customer Name» Amount, then the Parties will work cooperatively and in good faith together and take such actions as are necessary to conform this Agreement to such order(s).

This Section 9 shall survive the termination or expiration of this Agreement and shall survive even if any other provision(s) of this Agreement is held to be not consistent with law, or void or otherwise unenforceable.

10. STANDARD PROVISIONS

- (a) **Amendments**

All amendments to this Agreement shall be set forth in a written instrument signed by authorized representatives of each Party.

- (b) **Entire Agreement and Order of Precedence**

This Agreement, including the exhibit incorporated as part of this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement. The body of this Agreement shall prevail over the exhibit to this Agreement in the event of a conflict.

- (c) **No Third Party Beneficiaries**

This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and no other person or entity shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Agreement.

- (d) **Waivers**

No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

- (e) **Uncontrollable Forces**

Neither Party shall be in breach of their respective obligations under this Agreement to the extent the failure to fulfill any obligation is due to orders or injunctions issued by a court of competent jurisdiction ("Uncontrollable Force"). If an Uncontrollable Force prevents a Party from performing any of its obligations under this Agreement, such party shall: (1) immediately notify the other Party of such Uncontrollable Force by any means practicable

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and confirm such notice; (2) attempt in good faith to stay, suspend or mitigate the effects of such Uncontrollable Force as soon as reasonably practicable; (3) keep the other Party apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance.

11. TERMINATION AND REPAYMENT

(a) Basis for Termination

«Customer Name» may terminate this Agreement if BPA fails to use in the Definitive Payment ROD the methodology set out in Exhibit B to determine the Slice and non-Slice Definitive Payment Amounts or the «Customer Name»'s percentage(s).

(b) Notice and Repayment

«Customer Name» must give BPA written notice of its election to terminate this Agreement no later than ten (10) days after the issuance of the Definitive Payment ROD. «Customer Name» must repay to BPA the Standstill Payment no later than fifteen (15) days after the issuance of the Definitive Payment ROD by wire transfer in accordance with instructions provided by BPA.

12. SIGNATURES

Each signatory represents that he or she is authorized to enter into this Agreement on behalf of the Party for which he or she signs.

«FULL NAME OF CUSTOMER»

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By _____

By _____

Name _____
(Print/Type)

Name _____
(Print/Type)

Title _____

Title _____

Date _____

Date _____

Exhibit A
STANDSTILL PAYMENT

Standstill
Payment Amount

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Exhibit B **METHODOLOGY FOR DETERMINING CUSTOMER PERCENTAGE**

Because the Slice Product includes an annual true-up to actual costs, some specific issues must be dealt with to put Slice customers on parity with non-Slice customers when determining each customer's percentage of the Definitive Payment Amount under the proposed Standstill Agreement. The following approach was used to address such issues when determining the Standstill Payment, and will be used in BPA's initial rate proposal in the WP-07 supplemental rate proceeding:

1. The Definitive Payment Amount will be divided between non-Slice and Slice purchasers on a 77.3722 % -22.6278% basis. This will result in a Non-Slice Definitive Payment Amount and a Slice Definitive Payment Amount.
2. Individual customer Definitive Payment Amounts will be set by applying percentages to the Non-Slice Definitive Payment Amount and the Slice Definitive Payment Amount. A customer's Non-Slice percentage is equal to the ratio of each customer's FY07 PF non-Slice revenues to total non-Slice PF revenues, which would include Block purchases by Slice customers. For Slice customers, their Slice percentage is equal to the ratio of each customer's FY07 PF Slice revenues to total Slice revenues excluding any Annual Slice True-Up amounts. Each Slice customer would have a Slice percentage and a non-Slice percentage.